

**RESPONSE TO PUBLIC COMMENTS
45-DAY PUBLIC NOTICE AND COMMENT PERIOD
AUGUST 16, 2002 TO SEPTEMBER 30, 2002
ELECTRONIC HAZARDOUS WASTE REGULATIONS
DTSC CONTROL NUMBER: R-01-06**

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List of Commenters

Commenter Number	Organization	Name
1A	DTSC	Andre Amy
2A-B	Goodwill Industries	Randy Taylor
3A-B	Town of Apple Valley	Diana McKeen
4A	Sensient Technologies Corporation	Alan Bahl, PE
5A	Californians Against Waste	Rachel Zellner
6A	City of Santa Maria	Paul Karp
7A	County of Santa Barbara, Public Works	Phillip Demery
8A	City of Lompoc	Larry Bean, PE
9A-B	CA Refuse Removal Council/Edgar & Associates	Evan Edgar*
10A-J	Environmental Services Joint Powers Authority	James A. Hemminger/Larry Sweetzer*
11A	Citizen of California	Brian Hamlin
12A-K	American Electronics Association	Kelly Milton
13A-G	Californians Against Waste	Mark Murray*
14A-J	CA Manufacturers & Technology Association	Jeff Sickenger
15A-D	City of Modesto	Beverly McCullough
16A-D	Enforcement Advisory Council	Leonard Grossberg*
17A	County of Los Angeles	James Noyes/M. Michael Mohajer
18A-C	County of San Diego	Michael Dorsey
19A-C	CA CUPA Forum	Michael Dorsey
20NA	Duplicate of Comment 7A	Disregard
21A	Health Sanitation Service, Safety & Environmental Compliance	Ron Vilarino
22A-E	County of Santa Clara	Sharon Dowell

Commenter Number	Organization	Name
23A	Electronic Industries Alliance	Jason Linnell
24A-V	Electronic Industries Alliance	Holly Evans
25A-B	Industrial Environmental Association	Patti Krebs
26A-B	Micro Metallica Corp.	Chuan-Hai Teh, VP
27A-G	Silicon Valley Manufacturing Group	Margaret Bruce*
28A-L	Waste Management	Chuck White*
29A-D	Western Placer Waste Management Authority	Will Dickinson
30A-M	CIWMB	Rubia Packard/Claudia Moore [†]

Note: * Denotes commenters who presented oral comments during the September 30, 2002 Public Hearing and submitted written comments during the 45-Day Public Comment Period. All other comments received for the 45-Day Public Comment Period were in written form.

† Comments received after the close of the 45-Day Public Notice and Comment Period; in this document DTSC has included its responses to these comments, although DTSC is not required by the Administrative Procedures Act (APA) to formally respond to comments received after the close of public comments periods (Gov. Code §11347.3, subd.(b)(6)).

Comment Numbers by Section

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1.0	CRT Materials	
1.1	EPG Deletion from CRT Emerg. Regs	12E, 13D, 14D, 27E
1.2	Consideration of other Treatment Methods	13C, 24S, 24U, 28I
1.3	Employee Training	12I, 14J, 24P, 27G
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2.0	CED	
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2.2	HSC 25150.6 Compliance	9B/10F
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2.4	Load Checking	9B/10G
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2.6	HW Evaluation Process for CEDs; Inclusion of CEDs in UWR	3B, 9B/10B, 9B/10C, 12D, 14B, 15A, 18A/19A, 27D, 28B, 29B; 9B/10D, 12C, 15B, 24D
2.7	Fiscal Impacts/Funding to Local Agencies; Insufficient Recycling Capacity; Disposal Exemption Dates	3A, 6A/7A/8A, 9B/10E, 15D, 16D, 17A, 18B/19B, 21A, 22E, 30D; 9B/10H, 12B, 14C, 26A, 29C; 9B/10I, 15C, 28C, 30B

Section Number	Title of Section (Abbreviated)	Comments Addressed
3.0	CRT and CED Management	
3.1	Household and CESQUWG Exemptions	5A, 13E, 22C, 22D, 24E, 24F, 24L, 24M, 30F
3.2	Leachability Data	12H, 14E, 16B
3.3	Definitions of CRT Materials and CEDs; Conditional Exemption or Exclusion	24N, 30H, 13F, 24B, 24C, 24H, 24J, 30A; 12A, 24K, 25A, 26B, 24A, 28A
3.4	Disposal in Class II and II Landfills	16A, 16C, 29A/D, 30C
3.5	Exporting Requirements	12K, 13A, 24V; 12J, 13G, 14H, 24G, 27F
3.6	Economic Impacts	12F, 14D, 25B
4.0	Procedural Issues	
4.1	General Comments	2A, 9B/10A, 11A, 14A, 27A, 27B, 27C
4.2	Clarity Comments	1A, 2B, 4A, 13B, 22A, 22B, 24O, 30G, 30I, 30L, 30M
4.3	Petition Process	28L
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4.5	Studies Relied On	12G, 14F
4.6	Extension Time for Submittal of Comments	23A

1.0 Cathode Ray Tube (CRT) Material

In August 2001, DTSC adopted emergency regulations for the management of CRT materials. The emergency regulations ensure that CRT materials are not disposed in municipal solid waste landfills and provide a reduced set of requirements from the “full” hazardous waste management standards (e.g., permits, use of the hazardous waste manifest, hazardous waste transporter registration, accumulation limits). These regulations wholly adopt and amend portions of the CRT emergency regulations. Some comments received during the 45-Day Public Notice and Comment Period (45-Day Notice) relate to amendments made to the CRT emergency regulations.

1.1 Electronic Product Generator Deletion from CRT Emergency Regulations

Summary of Comments

12E: An exemption for small quantity generators should be included in the proposed regulations and/or reinstate the electronic product generator (EPG) exemption.

13D: There is an inconsistency between the CRT material conditionally exempt small quantity generator (CESQUWG) exemption in 66273.80¹ (CRT applicability section) and no mention of these entities under exemptions in 66273.8.

14D: Same as 12E.

27E: Explain the repeal of the EPG exemption; was the repeal intentional or an omission? Are consumer electronic devices (CEDs) included or excluded under the repeal of the EPG exemption?

Response

12E, 13D, and 14D: DTSC agrees with the suggestions that an exemption be included under section 66273.8 for CESQUWGs of CRT materials. This change will replace exemption language that was previously included in the CRT emergency regulations within this same section (and removed in the 45-Day Notice). This change will provide an exemption from the requirements of article 7 to persons who handle a limited number of CRT devices (five or fewer). See Response in Section 1.12 for an explanation on how the number of CRT devices was determined as a quantity limit for CESQUWGs.

Sections 66273.8 and 66273.9 have been amended to include an exemption for CRT materials handlers that is similar to the exemption for households.

¹ For purposes of this Response to Public Comments, all regulatory references are to the California Code of Regulations, title 22, division 4.5, unless otherwise specified.

27E: The repeal of the EPG exemption was intentional; however, the repeal created an unintentional omission of a similar exemption DTSC intended to allow for CESQUWGs of CRT materials. The amendments made in the 15-Day Public Notice and Comment Period Notice of Public Availability of Post-Hearing Changes (15-Day Notice) to sections 66273.8 and 66273.9 "re-instate" the exemption for persons who handle five or fewer CRT devices each year (e.g., small businesses).

CEDs are not included or excluded by the repeal of the EPG exemption because CEDs were not wastes proposed for regulation under chapter 23 in the original CRT emergency regulations.

1.2 Consideration of Other Treatment Methods

Summary of Comments

13C: Is wetting of CRT glass prior to crushing for the purpose of reducing worker exposure to phosphorus (taken to mean phosphors) [sic] an allowable treatment method under 66273.83(c)(11)?

24S: The limitations on the types of processing methods handlers can use are inappropriate because these limitations are unnecessarily stringent and would make it more difficult to develop an effective infrastructure for recycling of CRTs.

24U: DTSC should clarify that removal of components from CRT devices is not treatment and therefore would not require compliance with CRT material treatment operation standards in 66273.83. Clarify that removal of CRTs from CRT devices is not treatment.

28I: The prohibition on using chemicals (including water) and heat for treatment is much too narrow. Why not allow water in cutting and sawing processes? If the water is contained in an approved water circulation, treatment or filter process, then it should be allowed.

Response

DTSC has reviewed the comments and has determined that regulatory changes are appropriate, except for comment **24U**.

24S and 28I: DTSC agrees that small volumes of water can be used in the cutting and sawing processes (CRT material treatment). Therefore, subsection 66273.83(c)(11) has been amended to clarify that the use of "recirculated coolants" in CRT cutting operations is allowed under the regulations.

13C: DTSC is not aware of CRT treatment processes that require the use of water during the CRT crushing process to control/minimize the emission of phosphor dusts. Because DTSC is concerned that some CRT glass processing activities may be occurring that may not be protective of human health, subsection 66273.83(c)(14) has been added to include provisions for CRT material recyclers that ensure applicable worker health and safety requirements are met. These requirements may include dust controls and monitoring of workers' exposure to lead.

24U: DTSC does not agree that removal of CRTs from CRT devices is not a form of treatment. The requirements of section 66273.83 clearly state that these types of activity are treatment, and are allowable treatment when the CRTs are removed from CRT devices as described in subsection (b) of section 66273.83.

1.3 Employee Training

Summary of Comments

12I: The proposed changes from the emergency CRT regulations could be interpreted to apply to every employee who uses a computer or who routinely moves or handles a monitor in the office environment. The necessity for this change from the emergency regulations is not clear.

14J: The training requirements should be limited to actual handlers of waste CRTs.

24P: The proposed training requirements are overly prescriptive, are unnecessary, and would undermine the goals of the universal waste rule.

27G: This provision should be clarified to specify that only those employees who manage CRTs "destined for refurbishment, recycling or disposal" receive this level of training.

Response

12I, 14J, and 27G: DTSC concurs with the comments and has amended the requirements of section 66273.86 to clarify that CRT materials training must only pertain to employees who participate in waste CRT materials handling. An organizational change has been made to this section which specifies the level of training necessary for workers who handle waste CRT materials. However, all employees, even those who do not handle waste CRT materials, should be aware that CRT materials are prohibited from disposal.

24P: As stated in the Initial Statement of Reasons (page 54), DTSC believes that the training requirements for proper CRT materials handling will protect human health and prevent releases. The training requirements are similar to and consistent with the training requirements for employees who handle other types of universal wastes. Any additional training requirements for CRT material handlers are adopted to maximize employee safety because of the potential hazards associated with managing CRT materials (i.e., the hazards associated with handling or processing the CRTs).

1.4 Containerization of CRT Materials

Summary of Comments

28F: DTSC should amend the proposed regulations so that "loose packing" cannot constitute, or be considered equivalent to, containment in "containers or package," as is stated in section 66273.83(a)(1). Many CRT materials collectors are placing loose CRTs in trailers and roll-off boxes, which is inconsistent with the provisions of the existing CRT emergency regulations.

Response

DTSC concurs with this comment and has added subsection 66273.51 to prohibit the transportation of more than five CRTs and CRT devices unless the containment requirements of section 66273.83(a) are met. DTSC does not believe that changing the containment requirements of subsection 66273.83(a) to simply prohibit "loose packing" would be sufficiently protective. The requirements of this subsection are consistent with federal universal waste regulations for packaging of lamps. The acute handling hazards associated with CRT materials are similar to those of lamps, as long as both the CRTs and the lamps remain intact both pose a low risk to the handler. The containment requirements ensure that these wastes remain intact.

1.5 Out-of-State Handlers

Summary of Comments

28J: The impact of the regulations on out-of-state handlers is not clear. Are they required to notify as California CRT handlers? If they receive CRTs from California, must they notify? Do the notification and export requirements only apply to in-state CRT handlers?

Response

DTSC has reviewed the comment and has determined that no regulatory change is necessary. The existing regulations are sufficiently clear. Regulations promulgated in California only apply within the State, as does each law or regulation adopted in California.

The regulations only apply to CRT material handling activities conducted within California. Any person located within California who handles CRT materials in such a way as to be subject to the applicable requirements contained in these regulations, must comply with the notification requirements. Persons located outside California are not subject to these regulations for their CRT material handling activities conducted outside the State. The notification and exporting requirements adopted in this rulemaking are only applicable to CRT handlers operating within the State.

1.6 Solid Waste Collection

Summary of Comments

28K: When and in what situations would a solid waste hauling company that receives CRTs from one-day or multi-day collection events be required to comply with the notification requirements? Is notification required prior to such haulers collecting more than five CRT units during a curbside oversized item collection event conducted throughout the year?

Response

DTSC has reviewed the comment and has determined that no regulatory change is necessary. Notification of CRT material activity is required for any person who exceeds the quantity thresholds specified in section 66273.82 (e.g., either by accepting a certain number or volume of aggregate CRT material). Under the requirements of section 66273.82, notification to DTSC is not required before a CRT material handler collects CRT materials from other sources.

For clarity purposes, the notification requirements of section 66273.82 have been amended to change the notification date to February 1 of each year, commencing for the year 2004. This amendment has been made to clarify the reporting time frame for the previous calendar year's CRT material handling activities, as proposed in the 45-

Day Notice. The contents of the notification include information on the quantities of CRTs, CRT devices and CRT glass handled by the CRT material handler during the previous calendar year.

Previously, the date established in the CRT material emergency regulations was November 1, which created uncertainty for CRT material handlers when determining the time frame for reporting quantities of CRT materials handled.

1.7 Accumulation Time Limits

Summary of Comments

9A: The proposed regulations limit storage at transfer facilities or transfer stations (as defined in Health and Safety Codes section 25123.5) to 6 days in non-industrial zones. The regulations should allow permitted solid waste transfer facilities that handle CRT materials to accumulate CRT materials for up to one year.

24T: The accumulation time limit for CRT handlers should be more flexible to facilitate proper and efficient collection and recycling (especially for handlers who accumulate very small amounts of CRT materials).

28D: Confirm that the regulations allow a transfer station to accumulate CRT materials for up to one year, provided the transfer station notified DTSC as a CRT handler.

Response

9A: DTSC has reviewed the comment and has determined that no regulatory change is necessary. The existing regulations are sufficiently clear regarding the accumulation of CRT materials by CRT material handlers (i.e., up to one year) and storage of CRT materials by universal waste transporters at transfer stations during the normal course of transportation (6 days in non-industrial zoned locations and 10 days in industrial zoned locations).

The adopted storage limits imposed on transfer facilities that temporarily store universal waste, incidental to transport, are consistent with 40 C.F.R. 273.53 and with section 66273.53. Amendments to section 66273.53, which provides for the temporary storage of all universal waste incidental to transport, are beyond the scope of this rulemaking.

24T: As stated in the Initial Statement of Reasons for section 66273.85 (page 53), the one-year accumulation time limit is based on the federal universal waste program and the limit is consistent with a statutory prohibition of the 1984 Hazardous and Solid

Waste Amendments to the Resource Conservation and Recovery Act (RCRA) relating to land disposal restrictions. See pages 53 to 54 in the Initial Statement of Reasons for a detailed explanation of the rationale for limiting accumulation to one year.

Because of the large volume of space required to accumulate CRT materials, DTSC believes that an accumulation limit of one year is enough time to collect sufficient quantities to produce economies of scale for shipment, treatment or recycling activities. The one year limit will also minimize the accumulation of excess quantities of CRT materials, which may result in inappropriate management or unexpected releases of waste CRT materials. DTSC believes that accumulation times of greater than one year would not be protective of public health or the environment.

28D: The regulations allow transfer facilities (as defined in Health and Safety Code section 25123.3 and in California Code of Regulations, title 22, division 4.5, section 66260.10) to accumulate CRT materials, for up to one year provided they notify DTSC of their CRT material handling activities. If a permitted solid waste facility (Class II or III) also operates as a transfer station and handles CRT materials, it may accumulate those wastes for up to one year, provided the solid waste facility notifies DTSC of its CRT material handling activities.

1.8 Financial Assurance

Summary of Comments

24Q: The financial assurance rules for CRT handlers should not be finalized because they are unnecessarily burdensome and would discourage treatment and recycling activities.

Response

DTSC has reviewed the comment and has determined that no regulatory change is necessary. DTSC disagrees with the comment that the financial assurance requirements for CRT material recycling or treatment facilities are overly burdensome or will discourage these activities. These financial assurance requirements are similar to those requirements for permit-by-rule facilities, which DTSC has previously determined are protective of human health and the environment.

The financial assurance requirements are appropriate for facilities that engage in CRT material recycling and/or treatment to ensure that the facility has the financial means to

cover the costs associated with operating (during normal and emergency activities) and closing the facility. Eliminating this requirement would create a situation where operators of these facilities could abandon the location and funds would not be available for the clean up of any contamination that may result from their operations. Thus, to require financial assurance mechanisms ensures that taxpayers will not be burdened with clean-up costs.

1.9 Labeling

Summary of Comments

14I: Use labeling language consistent with other universal wastes; delete the requirement to label pallets with non-waste CRTs as "Universal Waste--CRT devices." Allow use of the terms "Waste CRTs" or "Used CRTs," as examples (as with other universal wastes).

Response

DTSC has reviewed the comment and has determined that no regulatory change is necessary. DTSC does not concur with the amendment suggested in the comment. See the Initial Statement of Reasons, page 53, for a detailed rationale for the labeling requirements for CRT materials and for pallets that contain non-waste CRT materials.

Allowing the use of the words, "waste" and "used" does not provide an enforcement agency representative with sufficient information to determine whether the contents of a container or group of materials are solid waste, hazardous waste, or universal waste. The use of these descriptions for labeling purposes would be ambiguous and would complicate compliance and enforcement efforts. For these reasons, DTSC has chosen consistent requirements for labels to identify containers holding "Universal Waste" or "UW".

1.10 Breakage Standard

Summary of Comments

28G: "Preventing breakage" is an impossible standard when handling CRTs; 100% containment of CRT glass is impossible. The regulations should provide more operational flexibility to allow CRTs' removal and treatment to be conducted "in a

designed conveyor, table or other work area" and to "maximize the containment and minimize the spillage of any" CRT glass.

Response

DTSC has reviewed the comment and has determined that no regulatory change is necessary. DTSC does not concur with the amendment suggested in the comment. DTSC recognizes that during CRT handling activities, breakage of CRTs, CRT devices and CRT glass will occur. The standard to prevent breakage and to conduct CRT removal and treatment operation in a containment device is a performance standard that provides handlers with the flexibility to choose the containment device used in their operations. Specifying the types of containment devices or work areas that are appropriate for these activities would require the establishment of prescriptive handling and equipment standards. DTSC has chosen a performance standard rather than a prescriptive standard for the types of containment devices used, to allow CRT material handlers flexibility in meeting this standard.

The adopted standards to prevent breakage are consistent with existing State universal waste requirements in sections 66273.13 and 66273.33 and are consistent with federal universal waste requirements of 40 C.F.R. sections 273.13 and 273.33 as these relate to the handling of universal waste lamps, upon which the CRT material management regulations are based.

1.11 Alternative Uses of CRT Glass

Summary of Comments

24R: Handlers should be allowed to process CRT glass for many forms of recycling (optical glass beads, decorative glass, tile products, acoustical barriers, radiation shielding, fiberglass, and lighting glass; copper smelting). Questions whether reclamation is accomplished for the types of CRT processing listed in the regulations. (Commenter claims that CRT glass qualifies for a recycling exclusion because the glass is actually being used as an ingredient or an effective substitute in CRT glass-to-glass recycling and in secondary lead smelters.)

28H: Same as 24R, above. Suggests amendments to include "for other purposes of recycling and recovery at a location authorized by [sic] state in which it is located for that purpose."

Response

24R and 28H: DTSC has reviewed the comments and has determined that no regulatory change is necessary. DTSC does not concur with the amendments suggested in the comments.

DTSC has created a self-implementing authorization for CRT glass that is destined for only certain, known end-uses (i.e., lead-smelter and CRT glass-to-glass processing). DTSC has evaluated these recycling pathways and has determined that CRT glass poses little risk to human health and the environment when it is recycled in these manners. DTSC has not evaluated other reclamation activities and end-uses and has not determined that these other recycling pathways can be conducted safely without a hazardous waste facility permit. DTSC may evaluate these "new" recycling technologies in the future.

With the impending and increasing volume of CRT materials that will be discarded as a result of the conversion to flat panel televisions and computer monitors, DTSC has selected high volume CRT glass reclamation technologies that are readily available and that will facilitate the shipment of CRT glass.

In addition, the United States Environmental Protection Agency (U.S. EPA) has recently published its proposed CRT rule in the Federal Register on June 12, 2002 (67 Fed. Reg. 40508). However, this proposed federal rule is not in effect at this time. These regulations are being adopted under the current federal hazardous waste regulations.

1.12 Notification Requirements

Summary of Comments

30E: Change the notification limit in the regulations to five CRTs per month or 60 CRTs per year.

Response

DTSC has reviewed the comment and has determined that no regulatory change is necessary. DTSC does not concur with the amendment suggested in the comment. The CRT material handler notification quantity limits (five CRTs) are consistent with the generation limits that define a conditionally exempt small quantity generator under the federal hazardous waste program (i.e., generates less than 100 kg of hazardous waste

per calendar month, see 40 C.F.R. section 261.5). The regulations are consistent with the quantity limits for other universal waste generators.

Five CRTs weigh approximately 200 pounds (40 pounds each), which is less than 100 kg (100 kg is approximately 220 pounds). Six CRTs weigh approximately 240 pounds, which is greater than 100 kg. Therefore, a limit of five CRTs was chosen as the regulatory limit. The 100 kg generation limit is the same generation limit that defines a conditionally exempt small quantity universal waste generator under existing State universal waste regulations (section 66273.9).

See the Initial Statement of Reasons, pages 44 and 45, for the detailed explanation of the rationale for the establishment of the notification quantity limits.

1.13 Land Use/Zoning Requirements

Summary of Comments

30J: Clarify the necessity for land use/zoning requirements for CRT materials recycling facilities when other universal wastes do not have similar requirements.

Response

DTSC has reviewed the comment and has determined that no regulatory change is necessary. The regulations for other universal wastes do not specify a self-implementing authorization for recycling or treatment activities; therefore, a similar requirement for the other universal wastes is not necessary. See the Initial Statement of Reasons, pages 52 and 53, for an explanation of the necessity of these requirements for CRT material recycling and treatment.

1.14 Notification to CUPAs

Summary of Comments

30K: Amend the regulations to require that Certified Unified Program Agencies (CUPAs) receive notifications for CRT material handlers and for CRT material recycling and treatment facilities.

Response

DTSC has reviewed the comment and has determined that no regulatory change is necessary. CRT material handlers, recyclers and treaters notification information is readily available to CUPAs and the general public on DTSC's website. To ensure completeness of the data that is submitted by these entities, the electronically-submitted notification information is reviewed by DTSC staff prior to placement of the information on the public website.

During the development of the regulations and prior to the 45-day public comment period, members of the California CUPA Forum were consulted on whether CUPAs would benefit from receipt of notifications in paper form. As a result of that consultation, the California CUPA Forum provided its concurrence that access to notification information via DTSC's public website would be sufficient to meet their enforcement mandates.

In addition, inspection of CRT materials treatment and recycling facilities falls under DTSC's jurisdiction, not under the jurisdictions of the CUPAs.

2.0 Consumer Electronic Device (CED)

2.1 Disassembly of CEDs

Summary of Comments

24I: Handlers should be allowed to remove components or otherwise disassemble CED wastes. Many CEDs contain components that are routinely removed and replaced during use, such as batteries, lamps, ink or toner cartridges, paper trays, attachments of various sorts, or other discrete assemblies. Many CEDs contain components that may be removed and replaced on a less frequent basis, such as when a sophisticated user or servicing contractor switches out a circuit board that is either defective or needs to be upgraded. If the components are commonly removed during use of the CED, there is no reason why handlers should be prohibited from removing the components from waste CEDs. The rationale is that if a user can safely remove the component during use, then handlers should be able to remove the component once the CED becomes a waste. Sorting and removing non-hazardous components should enhance collection and recycling efforts.

Response

DTSC concurs with the comment and has amended sections 66273.13, subdivision (d) and 66273.33, subdivision (d) to include provisions that will allow limited disassembly of CEDs without another authorization. These sections have been amended to allow removal of “discrete assemblies” from waste CEDs, provided the components are frequently removed during normal operation of the CEDs, (e.g., removal of batteries or ink cartridges). The disassembly of CEDs must be conducted in accordance with the operating manual of the CEDs, or in the absence of an operating manual, as otherwise performed during the normal use of the CED.

2.2 Health and Safety Code Section 25150.6 Compliance

Summary of Comments

9B/10F: Health and Safety Code section 25150.6 states that DTSC may define by regulation the types of materials that are considered "electronic hazardous wastes." The proposed regulations fail to achieve the definitional and categorization requirements of Health and Safety Code section 25150.6 in that specific types and/or categories of CEDs are not listed under the definition of CED in section 66273.9.

Response

DTSC has considered the comment and has determined that no regulatory change is necessary. California Health and Safety Code section 25150.6 authorizes DTSC to exempt persons managing specified hazardous wastes from the hazardous waste management requirements that would normally apply. DTSC has made the necessary findings and described the CEDs as required by this statute. DTSC has limited the CEDs subject to this rulemaking to only those that exhibit the hazardous waste characteristic of toxicity to ensure that DTSC's findings are valid.

2.3 Computer Peripherals in CEDs

Summary of Comments

28E: The definition of CEDs does not specifically identify computer peripherals (printers, keyboards, scanners, mice, etc.). Was this intentional or an oversight?

Response

DTSC agrees that the definition of CEDs should be clearer and, therefore, has amended section 66273.9 to include "computer peripherals" in the list of examples of CEDs. In addition, the definition contains the phrase "including, but not limited to" and, therefore even if DTSC had not made this amendment, hazardous "computer peripherals" would be included in this definition.

2.4 Load Checking

Summary of Comments

9B/10G: Unclear whether the proposed regulations propose new load checking requirements (to check for CEDs) for municipal landfill operators. If so, the associated costs to local governments should be acknowledged and quantified prior to adoption.

Response

DTSC has reviewed the comment and has determined that no regulatory change is necessary. "Load checking" requirements for municipal solid waste landfills are found in the California Code of Regulations, title 27, section 20870, and are not effected by the regulations. Currently, municipal solid waste landfills are required to implement a program to detect and prevent the disposal of hazardous wastes, commonly referred to as "load checking." CRT materials and CEDs that exhibit the hazardous waste characteristic of toxicity and are regulated as hazardous waste are already included in this existing "load checking" requirement. No changes to the municipal solid waste landfill "load checking" requirements are proposed in these regulations or are necessary as a result of these regulations.

2.5 Clarify "Do Nothing" Alternative

Summary of Comments

9B/10J: Review and clarify the description of the "do nothing" alternative relative to other statements in the rulemaking package. Clarify "some CEDs are hazardous" statements made in other portions of the package and "all... CEDs are hazardous waste when discarded" statement made in the "do nothing" alternative discussion.

Response

DTSC agrees that comments made in the **Alternatives Considered** section of the Initial Statement of Reasons and in other statements made other rulemaking documents were unclear regarding whether all CEDs are hazardous wastes and are subject to regulations. In this Response, DTSC would like to clarify that only CEDs that exhibit the characteristic of hazardous waste are subject to regulation under chapter 23. To add further clarification, only hazardous CEDs are identified as hazardous waste when discarded. The definition of CEDs has also been amended in section 66273.9 to clarify that only those CEDs that exhibit the characteristic of toxicity (as is also stated in section 66273.3 Applicability--Consumer Electronic Devices) are subject to regulation under chapter 23.

2.6 Hazardous Waste Evaluation of CEDs; Inclusion of CEDs in UWR

2.6.1 Hazardous waste evaluation

Summary of Comments

3B: Unclear where to find the type and quantity of hazardous wastes (HWs) found generally in different types of CEDs.

9B/10B: Unclear which CEDs are known to have "hazardous waste characteristics".

9B/10C: Unclear who is responsible for making the above determination (DTSC, generators, consumers, or municipal landfill operators).

12D: CEDs have not been classified as HW; therefore it is premature to assume that they should be included in the category of universal waste (UW).

14B: The regulations' default classification of CEDs promotes an unworkable regulatory environment. If these regulations are intended as a placeholder for subsequent CED UW regulations, amend these regulations to stipulate that CEDs will not be regulated as UW until such time that DTSC designates specific CEDs or device categories as UW.

15A: Unless the regulations have a specific list of products and specific disposal regulations related to each product, it will not be possible for any agency at any level to enforce "proper" disposal of the CEDs.

18A/19A: Amend the regulations to state that DTSC will determine through testing that a discarded CED meets the toxicity characteristic and is therefore eligible for management as a UW. Until DTSC has made these HW/UW determinations, CEDs should be classified as solid waste.

27D: The regulations are ambiguous because they do not provide a list of CEDs that are universal waste. This overburdens the general public and is a disincentive for industry to participate in source reduction.

28B: Unclear which, if any, CEDs are hazardous. Therefore, the necessity and consistency standards of the Administrative Procedures Act (APA) are not met in this rulemaking (lack of evidence of their hazardous characteristics).

29B: Solid waste landfill operators will be forced to handle all CEDs as hazardous unless the regulations provide a specific list of HW/UW CEDs. Thus, the regulations are not protective of public health or the environment.

2.6.2 Inclusion of CEDs under the State's Existing Universal Waste Rule (UWR)

Summary of Comments

9B/10D: Unclear about the regulatory scope and applicability if one cannot make the determination of hazardousness.

12C: U.S. EPA solid waste data show CEDs are insignificant contributors to the total lead in landfills; CEDs should not be included in UWR.

15B: What criteria will be incorporated to decide which products will be labeled UW and who decides?

24D: CEDs that exhibit any HW characteristics should be eligible to be managed under the UWR.

Response

DTSC has reviewed the comments and has determined that no regulatory change is necessary to address the statements made in the comments. DTSC does not concur with the amendments suggested in the comments.

Applicability of the State's Existing Hazardous Waste Evaluation Criteria to CEDs

DTSC is not adopting regulations that will add new hazardous wastes to the existing State program. Waste CEDs that are "characteristically hazardous" are already hazardous waste. With this rulemaking, DTSC is offering a new regulatory management system for CEDs that is commensurate with the generation patterns and the hazards posed by this waste category.

9B/10C, 18A/19A, and 12D: It is the responsibility of the person who causes material to become a waste (i.e., the generator of the waste) to determine whether the waste (i.e., a CED) exhibits a hazardous waste characteristic. Existing section 66272.11

requires the generator to determine whether a waste is hazardous; changes to this existing section are not within the scope of this rulemaking.

Any material that is a waste must be evaluated to determine its regulatory status, whether hazardous waste or non-hazardous waste. In some instances data is available, through testing of the material or through knowledge of the material's composition, which unequivocally shows that the material meets the criteria of a hazardous waste. However, if the person who generates the waste can demonstrate that the waste does not meet any hazardous waste criteria, that material can be managed as a municipal solid waste. The hazardous waste evaluation process is contained in existing regulations, which are not part of this rulemaking. This rulemaking does not propose changes to the waste evaluation process and that process is not within the scope of this rulemaking.

3B, 9B/10B, 14B, 15A, 15B, 27D, and 29B The toxicity characteristic of hazardous waste is demonstrated in several ways, one of which is through the use of the Toxicity Characteristic Leaching Procedure (TCLP). Preliminary test data from DTSC's Hazardous Materials Laboratory shows that most CEDs that have been analyzed by using the TCLP, exceed the regulatory threshold (RT) for lead. A waste that exceeds the RT for a regulated contaminant is identified as a hazardous waste. As stated in the 45-Day Public Notice and Comment Period, pages 10 and 11, because of the wide variety of CEDs that exist today and the rapid rate of new CEDs being developed, it is not possible to create a "list" of all the CEDs that meet the toxicity characteristic.

18A/19A: Further analytical testing of CEDs in the future will likely demonstrate that some, but not all, CEDs exhibit a hazardous waste characteristic. Unless these regulations are adopted, there will not be a mechanism to allow hazardous waste CEDs to be managed under the alternate universal waste regulatory scheme. The management of these hazardous waste CEDs will then continue to be regulated under the existing hazardous waste management system, including requirements for the use of a uniform hazardous waste manifest, registered hazardous waste transporters, and final treatment or recycling at a permitted hazardous waste facility. DTSC continues to believe the best management system for CEDs is under the State's UWR.

Inclusion of CEDs Under the State's Existing UWR

9B/10D and 28B: Hazardous CEDs meet all of the criteria for inclusion under the UW regulatory scheme. These criteria are discussed in the Initial Statement of Reasons, pages 21 to 25, and are the same criteria used by U.S. EPA to evaluate whether a hazardous waste should be managed under the federal UWR. This rulemaking incorporates the same petition process (which includes the evaluation criteria discussed

previously) that U.S. EPA uses to place hazardous wastes under the federal universal waste regulations.

12C: The criteria used to identify a waste as hazardous waste does not include data that supports the waste's contribution of specific contaminants in a landfill (e.g., a demonstration that CEDs contribute significantly to lead levels in landfill leachate). Instead, the hazardous waste criteria apply a simple test to determine potential leachability. CRT materials and CEDs can potentially contaminate the State's ground water resources and, therefore, warrant regulation as hazardous wastes.

24D: DTSC does not believe that allowing CEDs, that exhibit the hazardous waste characteristics of reactivity, ignitability or corrosivity, to be managed as other universal wastes would be protective of human health and the environment. These characteristic wastes pose greater acute risks, and thus do not meet the criteria for addition to the UWR. Therefore, these characteristic hazardous wastes must continue to be managed under the existing hazardous waste regulations.

2.7 Fiscal Impacts/Funding to Local Agencies; Insufficient Recycling Capacity; Disposal Exemption Dates

2.7.1 Fiscal Impacts/Funding to Local Agencies

Summary of Comments

3A: Disagrees with the fiscal impacts statement for local agencies because the costs to collect CRTs have increased since the adoption of the emergency CRT regulations and the implementation of the CRT disposal prohibition.

6A/7A/8A: Inclusion of CEDs in the UWR creates an unfunded mandate for local governments.

9B/10E: The fiscal analysis is lacking in evaluation of costs for: (a) development of collection infrastructure, (b) response to illegal disposal, and (c) local agencies' increased recycling and disposal costs responsibilities.

15D: What funding mechanism will be available to help local agencies with the costs of CED disposal?

16D: The fiscal impacts have not been adequately addressed.

17A: The fiscal estimates are lower than actual costs.

18B/19B: The regulations substantially impact household hazardous waste collection programs; this impact is not reflected in the fiscal analysis.

21A: Management of CEDs will place an increased financial burden on local governments.

22E: Local governments will bare the financial burden of all electronic wastes.

30D: Local agencies need funding to implement collection/recycling programs for CEDs.

2.7.2 Insufficient Recycling Capacity

Summary of Comments

9B/10H: Capacity will not be adequate in 2006; what will happen, especially in rural counties?

12B: The electronics recycling capability in California is insufficient, especially for lower value CEDs, for which no established recycling infrastructure exists. Questions assumption that the same rate of increased CRT recycling will occur for CEDs. Seeks data source for CRT recycling increase.

14C: Same as 12B, above.

26A: Designating CEDs and CRT materials for management under the UWR will restrict the growth of a recycling infrastructure.

29C: If markets do not develop for CEDs, what options will be available for their disposal other than disposal in a Class I landfill?

2.7.3 Disposal Exemption Dates

Summary of Comments

9B/10I: 2006 is arbitrary; consider 2008 or 2009 if there if no objective basis for the proposed date. Amend the regulations to allow DTSC to extend the "temporary" disposal exemption indefinitely until DTSC can prove that adequate infrastructure exists.

15C: If CEDs are so dangerous, why do the regulations propose a 4-year extension on the disposal ban? Why not ban CEDs from landfills immediately?

28C: Unclear how CED wastes can be managed prior to 2006 prohibition dates. How do the exemptions apply to small and large quantity generators?

30B: The disposal ban is premature. Consider a phase-in after 2006 based on sufficient infrastructures for the wastes already subject to the 2006 ban.

Response

General Discussion of the Fiscal Analysis Development Approach Used by DTSC Responses to Specific Comments Follow: DTSC has reviewed the comments and the fiscal analysis documents, and has determined that no amendments are necessary. DTSC believes that the fiscal analysis performed for this rulemaking and the statements made on the Economic and Fiscal Impact Statement (Regulations and Orders) (STD. 399) [Form 399] adequately address the fiscal impacts of compliance with these regulations for state and local agencies. The Form 399 was completed in compliance with the State Administrative Manual (SAM), section 6600 through 6680.

Fiscal impacts are not required to be estimated for costs incurred should a public agency choose to implement a local universal waste collection program (i.e., a CED or CRT collection program), which many of the comments assert is mandated by these regulations. "Costs and savings" were estimated, as defined by SAM section 6601, for "additional costs or savings, both direct and indirect, that a public agency necessarily incurs or realizes in reasonable compliance with a regulation." These regulations do not create any new local mandates because the wastes are presently hazardous waste and fully regulated. The fact that many organizations are not properly managing the wastes is irrelevant in claiming a new cost. Hence, funding mechanisms for local reimbursements are not germane to this rulemaking.

For purposes of "cost and savings" for "reasonable compliance with the regulations" DTSC was required under the provisions of the SAM to only estimate the cost and savings for local agencies that choose to manage their hazardous waste CRT materials or CEDs under the alternative set of management standards provided in chapter 23 (UWR).

DTSC recognizes that the costs to manage CRT materials have increased since people realized that CRT materials could not be disposed to municipal solid waste landfills. (Prior to the emergency CRT regulations, these wastes were disposed in the municipal solid waste stream at little or no additional costs.) However, the costs of managing CRT materials under the universal waste regulations, rather than under the full hazardous waste regulations are most likely less than the costs that would be incurred if these regulations are not adopted.

Fiscal Impacts/Funding to Local Agencies

Comments from subsection 2.7.1: The regulations apply only to CEDs that are found to exhibit the toxicity characteristic of hazardous waste. No new hazardous wastes are being identified under this rulemaking. Therefore, no new mandates are created for local agencies to manage these existing hazardous wastes under the alternate

universal waste regulations. Fiscal impacts of managing CEDs under the UWR rather than under the full hazardous waste standards has been estimated to result in a cost savings to local agencies who choose to manage CEDs in accordance with the regulations.

Establishment of the funding mechanisms that local agencies assert are necessary is beyond the scope of this rulemaking. The establishment of a statewide funding mechanism would require action by the State Legislature.

Insufficient Recycling Capacity

Comments from subsection 2.7.2 (except 9B/10H and 29C): DTSC is confident that recycling infrastructures and markets will develop for CEDs, as they have for CRT materials. Many of the current CRT materials handlers and recyclers, both in California and out-of-state, have increased their processing capacity and handling of CEDs as "carry-over" business from CRT material collection and recycling activities.

Although quantitative CRT recycling data are estimated, CRTs are being recycled at an increasing rate since the adoption of the CRT emergency regulations in August 2001. This anecdotal information was compiled as part of the fiscal analysis, but is not required to be used in the fiscal analysis because costs associated with increased recycling capacity are not part of the fiscal or economic impact analyses required for this rulemaking.

DTSC does recognize, however, that sunseting the exemptions prior to the availability of better alternatives for universal waste recycling and disposal by small generators could increase mismanagement to both municipal solid waste landfills and the environment if municipal waste collectors reject the universal wastes. DTSC will closely monitor progress in developing and implementing collection alternatives and will consider the extension of the exemptions if it is determined that the lack of alternatives will cause environmental harm.

9B/10H and 29C: Again, DTSC is confident that by the 2006 disposal prohibition date, markets for recycled CEDs will be further developed as will recycling capacity. Should these markets and recycling capacity not develop by 2006, DTSC will reevaluate the regulations at that time to determine the most appropriate management approach for CEDs that is protective of public health and the environment.

Disposal Exemption Dates

9B/10I and 15C: The February 8, 2004 and February 8, 2006 dates are consistent with existing disposal exemption dates for other universal wastes. The dates were not

changed from the existing State UWR to maintain regulatory consistency, to reduce confusion, and to provide the regulated community with one set of disposal exemption dates. As with the other universal waste disposal exemptions, the dates were established to allow sufficient time for adequate recycling infrastructure, local agency oversight, and public education campaigns to further develop. See the Final Statement of Reasons for the Universal Waste Rule (R-97-08), pages 12-18 and 25-26, incorporated herein by reference, for a detailed discussion on the selection and appropriateness of these existing, disposal exemption dates. See Response to 9B/10H, above, regarding DTSC's consideration of available recycling capacities (through 2006) and how that may warrant reevaluation of the regulations.

If these regulations are not adopted, existing statutes and regulations will continue to require hazardous waste CEDs to be disposed to Class I landfills.

30C: See response to B/10H.

28C: DTSC will clarify how exemptions apply to large and small quantity generators. See text of 15-day notice.

3.0 CRT Material and CED Management Comments

3.1 Household and Conditionally Exempt Small Quantity Universal Waste Generator (CESQUWG) Exemptions

Summary of Comments

5A: Section 66273.80 excludes households and CESQUWG (as provided for in section 66273.8-Exemptions) from the requirements for CRT material handlers in article 7. Section 66273.8 does not include CRT materials under the CESQUWG exemption provisions, and CRTs are therefore "specifically excluded" from the exemption offered to CESQUWG in section 66273.8. Under section 66273.9 (Definitions), CRT materials are not included in the waste types listed under the definition of CESQUWG and are, therefore, "specifically excluded" from being managed by CESQUWGs. Is it just households that are exempt from the CRT regulations?

13E: Repeal sections 66273.8(a)(1) and (a)(4) to remove the temporary disposal exemption for households and CESQUWG of CEDs as this situation creates a "loophole" for products that may potentially be banned by DTSC from disposal at some

future date. The effects of these products are unknown at this time and these effects may be more significant than the effects of CRTs.

22C: Section 66273.9 includes a definition for CESQUWG that is qualified by specific dates and excludes only CRT materials from the monthly limits of hazardous waste generation. Does this mean that hazardous CEDs must be included in the limits for waste generation? If so, this is inconsistent with language in section 66273.8(a)(2) that does not include CEDs in the quantity limit calculations.

22D: Section 66273.8(a)(4) exempts CESQUWGs from managing CEDs as a universal waste until February 8, 2006; clarification is needed as to when CEDs need to be included in the monthly waste calculations for qualification as a CESQUWG.

24E: Household CED waste should be generally exempt from regulation. The most effective way to address such wastes at the present time is through public education efforts and the development of an infrastructure for collection and recycling of household CEDs. A regulatory mandate for recycling would be difficult for households to comply with in the absence of an effective recycling infrastructure. Without public education, unsuspecting households may dispose of CEDs in violation of the regulatory requirement.

24F: CED wastes generated by CESQGs should be exempt from regulation. The same reasons stated for households (under comment 24E) are also stated in this comment.

24L: Household CRT waste should generally be exempt from regulation. Same reasons as stated in comment 24E.

24M: CRT waste generated by CESQGs should be exempt from regulation. The same reasons stated for households (under comment 24E) are also stated in this comment.

30F: Amendments made to section 66273.8 make it unclear whether universal waste batteries, lamps, mercury thermostats and CEDs that are recycled, instead of disposed of in a solid waste landfill, are classified as hazardous waste. The CESQUWG exemption in the same section allows the same wastes to be recycled or disposed in a permitted solid waste landfill. Under this latter exemption, it appears that these wastes are considered non-hazardous waste when they are recycled or disposed in a permitted solid waste landfill.

Response

Clarity of CESQUWG Definition and Applicability to CRT materials

5A, 22C, 22D, and 30F: DTSC has reviewed the comments and agrees that sections 66273.8 and 66273.9 need to be clarified regarding the definition of CESQUWG and the corresponding exemptions for these entities. These sections have been amended in the 15-Day Public Notice of Post-Hearing Changes to clarify that CESQUWGs can manage five or fewer CRT devices, that these quantities will not be used in the quantity

limit calculation contained in this definition, that the phased disposal exemptions do not apply to CRT materials (CRT materials in any quantity are prohibited from disposal under section 66273.81), and that the exemption only applies when the subject wastes are disposed of in a landfill permitted to accept municipal solid waste or hazardous waste. Universal wastes are hazardous wastes, regardless of whether they are recycled or disposed.

Repeal of Disposal Exemption to Allow Disposal in Municipal Solid Waste Landfills

24E, 24F, 24L, and 24M: DTSC has reviewed these comments that recommend the repeal of the disposal exemptions, and DTSC does not concur. DTSC is not allowing permanent disposal exemptions because that would allow a very large volume of hazardous waste to escape regulation in the long term and would fail to fully address the public health problem for which these regulations are being adopted. DTSC does not have the statutory authority to exempt all household or all conditionally exempt small quantity universal waste generator hazardous wastes from regulation. In many instances, DTSC could only exempt these wastes from regulation as hazardous waste if these wastes have been exempted by the U.S. EPA. Municipal solid waste landfills (Class II and III) are prohibited from accepting hazardous waste unless the landfill has been approved to accept a particular hazardous waste (Cal. Code Regs., tit. 27, §20870). To allow municipal solid waste landfills throughout California to accept hazardous CRT materials and CEDs would require that each landfill undergo a modification of its existing permit and/or the following changes, all of which are outside the scope of this rulemaking: (a) a change or changes to the California Code of Regulations, title 27 by the California Integrated Waste Management Board; (b) compliance with treatment standards in Health and Safety Code Section 25179.5; (c) a variance from DTSC; and/or (d) statutory changes.

Burden on Households/CESQUWGs for Proper Disposal/Recycling of CEDs

24E and 24L: Commenters have raised many of the same issues with the CESQUWG exemption as with the household exemption, and the responses to these issues remain the same. California has one of the oldest and best established household collection programs in the nation. Throughout the State, householders have brought waste paints, pesticides, solvents, fuels, and other household hazardous wastes to permanent and temporary household hazardous waste collection facilities. Currently, household hazardous waste collection programs exist in many municipalities that are readily available to householders and CESQUWGs for the proper relinquishment of their universal wastes. In response to these regulations, DTSC expects additional collection and recycling infrastructure to develop. Therefore, DTSC does not agree that

householders and CESQUWGs will have difficulty finding appropriate means for handling these subject wastes.

Repeal of Phased Disposal Exemptions

13E: DTSC does not concur with the suggestion to repeal the phased disposal exemptions in section 66273.8. DTSC has stated in the Initial Statement of Reasons, pages 36-37, for these regulations that the phased disposal exemption dates are consistent with existing State universal waste regulations. It was also stated in the Initial Statement of Reasons that this phased approach will facilitate the development of adequate collection and recycling infrastructures for this new category of universal waste. Also, see Response to comments for Subsection 2.7.3 for a discussion of the establishment of the disposal exemption dates which were originally made in the State UWR.

Clarification of CEDs in Quantity Limit Calculations for CESQUWGs

22C: Under the definition of CESQUWG in section 66273.9, CEDs would be included in the universal waste generation *quantity* limit calculations prescribed in that definition. CEDs are included in the list of universal waste, as are batteries, mercury thermostats, and lamps. The exemption provisions of section 66273.8 allow certain quantities of particular universal wastes to be *disposed* until 2006. The quantity limits in section 66273.8 are *disposal* amounts, while the quantity limits in section 66273.9 are for *generation* amounts. Therefore, there is no inconsistency between the quantity limits in sections 66273.8 and 66273.9 because each governs a different waste management activity (i.e., disposal or generation).

3.2 Leachability Data

Summary of Comments

12H: Does DTSC have any data on the leachability of CRTs and/or CEDs in a landfill environment?

14E: California's toxicity test may not be a relevant indicator of the environmental fate of consumer electronics. Questions the use of TCLP as a "real world" indicator for leachability of CEDs under landfill conditions.

16B: The regional water quality control board's leachate data does not show levels of lead over the soluble levels claimed by DTSC.

Response

12H: DTSC has reviewed these comments and has determined that no regulatory change is necessary. DTSC disagrees with the comments that leachability data in landfills for CRTs and CEDs must be available to demonstrate the necessity of these regulations. The extraction methods used to determine the soluble content of a given waste are the Waste Extraction Test (WET) and Toxicity Characteristic Leaching Procedure (TCLP), which are the existing State and federal test methods, respectively, used to determine whether a waste exhibits the toxicity characteristic, and is a hazardous waste. Wastes that are identified as hazardous using these tests have the potential to contaminate ground water and should not be disposed in municipal solid waste landfills.

14E and 16B: These extraction methods (WET and TCLP), used to measure the solubility of a specific hazardous waste constituent (e.g., lead), were designed to mimic landfill conditions and are used to demonstrate whether the wastes exceed the Regulatory Thresholds (RTs) for certain hazardous constituents. When one of these RTs is exceeded, the wastes are considered hazardous wastes, and are regulated under either, or both, the federal and State hazardous waste regulations.

Evaluation of the validity of these tests (WET or TCLP) as appropriate methods to evaluate hazardous wastes and as indicators of a given waste's behavior under changing landfill conditions are beyond the scope of this rulemaking. Although the commenter asserts that the levels of lead in landfill leachate are below the hazardous waste RTs (soluble lead levels), levels of hazardous waste constituents in landfill leachate cannot be used to determine whether a waste is a hazardous waste. The WET and TCLP extraction methods are the appropriate tests used to determine whether wastes are hazardous; measuring the soluble levels of hazardous constituents in landfill leachate does not accomplish this task.

3.3 Definitions of CRT Materials and CEDs; Conditional Exemption or Exclusion

3.3.1 CRT Definition

Summary of Comments

24N: DTSC should clarify the point when CRT wastes are generated. CRT devices destined for refurbishment (or for evaluation to determine whether they can be refurbished) are not wastes, and cracked CRTs are not necessarily wastes, unless they cannot or will not be repaired and returned to service.

30H: The definition of CRT material (section 66273.9) should include CRT glass that is destined for reclamation as a CRT material (CRT or CRT device).

3.3.2 CRT Conditional Exemption or Exclusion

Summary of Comments

12A: Adopt the U.S. EPA proposed exclusion of CRTs destined for recycling from the definition of solid waste.

24K: Conditionally exclude CRT materials from the definition of solid and hazardous waste when they are destined for recycling.

25A: CEDs should be classified and managed as an excluded, recyclable material.

26B: Same as 12A, above.

3.3.3 CED Definition

Summary of Comments

13F: Develop a petition process for DTSC determinations on toxicity characteristics for specific CEDs.

24B: Clarify that CEDs will generally not be regulated. The broad definition of CED could be interpreted that ALL electronic devices and components will be subject to UWR.

24C: Clarify the definition of CEDs. The existing definition provides little guidance on what is covered under the definition. A broad definition should be used so that more materials are covered under the rule.

24H: Clarify the relationship of the CED proposal to other rules. Could the other universal wastes be considered a CED? Do the CED requirements apply to each component of the CED?

24J: Clarify the point when CEDs are generated. Add clarification that CEDs are not waste when destined for direct reuse, repair and reuse, or evaluation to determine whether they can be reused and/or repaired.

30A: The proposed definition is too broad and not clearly understood. (Acknowledges that DTSC has preliminary data showing that cell phones are hazardous.)

3.3.4 CED Conditional Exemption or Exclusion

Summary of Comments

24A: Conditionally exclude CEDs from the definition of solid and hazardous waste when they are destined for recycling.

28A: CEDs should be conditionally exempt from regulations as a hazardous waste if the CEDs are being recycled.

Response

DTSC has reviewed the comments and has determined that no regulatory change is necessary, except for comment **24C**, regarding clarity of the definition of CEDs.

CRT Definition

24N and 30H: CRTs have been shown to be hazardous under both the federal and State hazardous waste toxicity characteristic for lead. Therefore, CRT materials are regulated as waste when discarded. Discarded includes processing materials to recover useable products or components.

CED Definition

24B, 24C, and 24J: The definition contained in section 66273.9 provides a description, but the "Applicability--Consumer Electronic Devices" section (section 66273.3) of the regulations clearly states that only those CEDs that exhibit the toxicity characteristic are regulated. The definition of CED in section 66273.9 has been amended to clarify that only those CEDs that exhibit the hazardous waste characteristic of toxicity are subject to regulation under chapter 23, as is clearly stated in section 66273.3.

24H: CEDs are a separate waste category and it is not DTSC's intent to include other universal wastes within the CED category. In the case of thermostats, batteries and lamps, the more specific regulations apply to these wastes.

CRT Material and/or CED Conditional Exemption or Exclusion

Comments in subsections 3.3.2 and 3.3.4: Until U.S. EPA codifies regulations that provide an exemption or exclusion for RCRA-characteristic wastes (e.g., CRTs), DTSC cannot adopt similar exemptions or exclusions.

30A: See Responses in Section 2.6 regarding the rationale for not creating a list of CEDs that are subject to regulation in this rulemaking.

3.4 Disposal in Class II or III Landfills

Summary of Comments

16A: Allow disposal of CRTs in double-lined landfills (other than Class I landfills).

16C: Include in the **Alternatives Considered** section an analysis of disposing universal wastes in "lined permitted landfills," i.e., Class II and III.

29A/D: Allow disposal of CRTs and CEDs in Subtitle D-lined landfills (Class II landfills with Subtitle-D lining systems) because of insufficient evidence that disposal in such landfills creates a hazard to public health or the environment.

30C: Same as 29A/D above.

Response

DTSC has reviewed the comments and has determined that no regulatory change is necessary.

16A, 29A/B, and 30C: DTSC does not have the statutory authority to permanently exempt these hazardous wastes from regulation. DTSC can only exempt RCRA hazardous wastes from regulation as hazardous waste if these wastes have been exempted by U.S. EPA. Municipal solid waste landfills (Class II and III) are prohibited by State regulation from accepting hazardous waste unless the landfill has been approved to accept a particular hazardous waste (Cal. Code Regs., tit. 27, §20870). Only changes beyond the scope of this rulemaking could allow disposal of hazardous waste to municipal solid waste landfills (see Response to Comments **24E**, **24F**, **24L**, and **24M** in Section 3.1, incorporated herein by reference).

16C: DTSC has considered the alternative that would allow for the management of CRTs and CEDs in "lined, permitted landfills," presumably to Class II and III industrial and municipal solid waste landfills. DTSC has determined that it would not be as

protective of human health or the environment (DTSC's primary mission) to allow these wastes (which are hazardous wastes) to be permanently disposed in these municipal solid waste landfills. In addition, as the Response to comments **24E**, **24F**, **24L** and **24M** in Section 3.1 demonstrates, this alternative would require numerous changes outside the scope of this rulemaking, some of which are also outside the scope of DTSC's authority. In addition, the Legislature has directed, in Health and Safety Code Section 25157.8, that wastes containing hazardous substances at levels typically found in CRT materials and CEDs are disposed in Class I hazardous waste disposal facilities, even if they are not hazardous wastes.

3.5 Exporting Requirements

3.5.1 CRTs

Summary of Comments

12K: Regardless of DTSC's rule, electronics will continue to be exported to viable markets that exist overseas. Provide clarification on how the export issue places DTSC at odds with U.S. EPA's proposed rulemaking for CRTs.

13A: Adopt language from Senate Bill 1523 (proposed during the 2001-2002 Legislative session) regarding a ban on export (the Basel Action Network Ban).

24V: The notification requirements in the proposed regulations for CRT exporters should not be finalized. Questions DTSC's authority to require export notifications because requiring such notifications would impede international commerce and would constitute engagement in foreign policy, both in violation of the U.S. Constitution.

3.5.2 CEDs

Summary of Comments

12J: The export notification requirement should apply to universal waste transfer facilities and not generators. The rulemaking contains no information on 1) the necessity of notification to DTSC and CUPAs, and 2) how will DTSC "approve" exports and under what criteria.

13G: Exporting provision for CEDs should be no less stringent than for any other type of universal waste [Organization of Economic Co-operation and Development (OECD) language in 66273.56].

14H: Same as 12J, above.

24G: The notice requirements for CED exporters should not be finalized. Questions DTSC's authority to require export notifications because requiring such notification would impede international commerce and would constitute engagement in foreign policy, both in violation of the U.S. Constitution.

27F: Delete the CED notification requirement; the generator does not always know whether the material will be exported; this reporting requirement may limit future business options; clarify the purpose of collecting this information.

Response

DTSC has reviewed the comments and has determined that no regulatory change is necessary. Health and Safety Code section 25150.2 directs DTSC to adopt regulations that are consistent with federal regulations concerning the transportation of hazardous waste from California across international boundaries. Existing State international shipment regulations are found in article 5 of chapter 12, which are based on 40 C.F.R. Part 262, Subpart E and on repealed section 66515. In this rulemaking for CRT materials and CEDs, DTSC has incorporated requirements for their export identical to the State's existing export requirements for non-RCRA hazardous waste (article 5, chapter 12). DTSC believes these export requirements are sufficient for these wastes. These requirements apply to these wastes, whether they are managed under full hazardous waste requirements or under the universal waste requirements.

Notification of Export Requirement Clarification

27F: Export notification is required to provide DTSC with a tracking mechanism for wastes that leave the State and are destined for handling in a foreign country. This tracking allows DTSC and any applicable CUPA to monitor waste shipments and maintain records on the types and quantities of hazardous wastes exported. This information will help DTSC allocate sufficient oversight and enforcement resources to locations within the State that serve as foreign ports of entry and egress for hazardous waste shipments.

12K: DTSC recognizes that the export notification will not preclude the export of CRT materials or CEDs, nor is notification solely intended to do so. However, DTSC will be able to better track export shipments and enforce existing export requirements with this notification information.

Clarification of Primary Exporter Responsibility for Export Notification

12J: Export notification requirements are placed on the primary exporter, or the person who initiates the exportation of the wastes. Depending on who initiates an export shipment, that person may be a generator, an intermediate CRT handler, a CRT

recycler, a universal waste handler (for CEDs), or a destination facility. A generator who also transfers a waste to another handler (who then exports the waste) does not need to notify DTSC of the export. The handler would be solely responsible for the export notification.

Export Requirements for CRT materials and CEDs

24V, 13G, 14H, and 24G: Export notification is required for certain hazardous wastes exported to any foreign country under both the federal and State hazardous waste programs. For exports to OECD countries, notification is not required to U.S. EPA for hazardous waste regulated under the federal program. However, export notification for both RCRA and non-RCRA hazardous waste is currently required under existing State regulations (see article 5, chapter 12). State statutes also impose export requirements (Health & Saf. Code §§ 25150.2, 25162.1 and 25162, subd. (e)). Because all universal wastes are hazardous wastes, by definition, confirming that the export notification requirements in existing regulations apply to universal wastes is not the imposition of any new regulatory requirement. These federal and State export requirements have not been deemed unconstitutional by a court.

DTSC's Authority to Request Export Notifications for Non-RCRA Hazardous Wastes

12J and 14H: Notification does not require the "approval" of DTSC or any other regulatory agency in California, and is required in accordance with the limitations on international commerce restrictions and foreign policy provisions of the U.S. Constitution. CEDs and CRT materials are not currently listed by U.S. EPA as universal wastes; therefore the imposition of the federal universal waste export requirements for these wastes would be inappropriate. Because under the federal program these wastes are hazardous wastes but not universal wastes, the export requirements for hazardous wastes are commensurate to maintain RCRA equivalency. See the Initial Statement of Reasons, pages 39 to 42 and page 58, for the detailed explanation of the appropriateness of the application of non-RCRA hazardous waste export requirements for CEDs and CRT materials, respectively.

Amendments to Export Requirements to Align with Recent Vetoed Legislation

13A: The Basel Action Network Ban provisions, as proposed in SB 1523, were vetoed by Governor Davis at the end of the 2001-2002 legislative session. DTSC does not have the statutory authority to implement these at this time.

3.6 Economic Impacts

Summary of Comments

12F: Disagrees with the "non-quantifiable costs" statements; costs are underestimated based on administrative cost.

14D: Cost impacts to business are understated, including administrative and replacement/renovation costs.

25B: Costs to manufacturers (generators) and consumers will increase without public health or environmental protection.

Response

DTSC has reviewed the comments and has determined that no changes to the fiscal statements made in the 45-Day Notice or the Form 399 are necessary.

DTSC prepared the Economic and Fiscal Impact Statement (Regulations and Orders) (STD. 399) [Form 399] using the required guidance contained in the California State Administrative Manual, sections 6600-6680. The economic impact analysis portion of the Form 399 was reviewed by the California Trade and Commerce Agency, Regulation Review Unit (RRU) during the 45-Day Public Notice and Comment Period. DTSC did not receive any comments or questions from the RRU on the Form 399 for this rulemaking.

DTSC recognizes that there will be costs for any business that manages hazardous wastes, whether the wastes are managed and disposed as hazardous wastes or the wastes are managed as universal wastes. The regulations provide a hazardous waste generator with the choice to manage CRT materials and CEDs as universal wastes instead of managing those wastes under hazardous waste regulations. In the course of developing its economic analysis, DTSC was unable to estimate the cost or savings that would be incurred by managing CRT materials and CEDs as universal waste. Data was not available on the number of waste CRT materials or CEDs, in any category, which are or will be generated in the State.

Because the average cost to recycle CRT materials and CEDs is known, based on industry estimates used in the State and local fiscal impact analysis, DTSC concluded that there would be nonquantifiable costs incurred to manage CRT materials as universal waste and nonquantifiable savings incurred to manage CEDs as universal waste. Nonquantifiable costs or savings do not mean that there are no or low costs for a business to comply with these regulations, only that DTSC could not provide a dollar

cost or savings estimate because of a lack of reliable data or of an inability to predict future events.

4.0 Procedural Issues

4.1 General Comments

Summary of Comments

2A: How do these new regulations help our organization (Goodwill Industries)?

9B/10A: Generally support inclusion of CEDs as universal waste, but find that the ill-defined scope of the proposed regulations is confusing because they are not clearly written. The proposed regulations will place ambiguous requirements on the regulated community that will be difficult to enforce consistently.

11A: Supports proposed regulations.

14A: Supports intent of regulations to foster recycling/collection; universal waste management is superior to full hazardous waste management when appropriate.

27A: Clarify DTSC's role in public education, partnerships with municipalities, recyclers, haulers and manufacturers, and the active cultivation of an effective infrastructure.

27B: What data was used to support DTSC's assertion that better public outreach resulted in more CRTs being properly managed?

27C: Provide evidence or anecdotal information to support statement that "...effective CRT recycling industry is developing in the State." Provide comparison of pre-regulation and current infrastructures.

Response

DTSC has reviewed the comments and has determined that no regulatory change is necessary.

2A and 9B/10A: The implementation of the proper and appropriate management requirements for CRT materials (the emergency CRT regulations adopted August 3, 2001) has led to an increase in the recognition that CRT materials cannot be disposed in municipal solid waste landfills. This increased awareness has resulted in an increase in CRT material recycling and a decrease in hazardous waste CRT materials disposal in municipal solid waste landfills. The imposition of the landfill ban on CRT materials in 2001 has promoted an increase in the number of businesses that collect and recycle these wastes. DTSC has also determined that adoption of these regulations will afford

an adequate level of management that is protective of public health and the environment.

DTSC acknowledges that the implementation of these regulations could be construed as a new requirement for those persons who were not previously aware that these wastes were hazardous waste. These entities may need to change their waste management operations and procedures to be compliant. However, these regulations provide universal waste handlers with clear guidance about the management options for the appropriate handling of these wastes, with the goal of reducing the effects of these hazardous wastes on public health and the environment. The regulations also provide streamlined management systems that are tailored to the hazards actually posed by each type of waste.

11A and 14A: Comments noted.

27C: As a result of the increase in CRT material handling capacity, many of these CRT materials handlers are also beginning to accept other electronic devices for recycling purposes. These data are supported by anecdotal information provided, through telephone contacts with DTSC, by CRT material collectors and recyclers located within and outside California.

27A and 27B: Since the fall of 2001, DTSC and the California Integrated Waste Management Board (CIWMB) have participated in public outreach efforts with many electronic waste stakeholders, including county and city municipalities, waste advocacy groups, non-profit organizations, electronic product manufactures, National Electronic Product Stewardship Initiative, U.S. EPA, CRT handlers and recyclers, and CUPAs.

4.2 General Clarity Issues

Summary of Comments

1A: Grammatical inconsistency on 66265.1(g) and 66264.1 on the use of "that" versus "which."

2B: Do any options exist that would allow consolidation locations to be used as "the point of source" (i.e., materials would be accepted at remote locations, even illegal, after-hours dumping, but record keeping would begin at consolidation locations) for all CRT materials accepted by a not-for-profit entity?

4A: Language in section 66261.9(a) is inconsistent with language in DTSC's proposed regulations, R-02-04, "Mercury Waste Classification and Management."

13B: As the CRT collection and recycling infrastructures continue to evolve, there may be a need to examine the "handler" definition to distinguish regulatory roles and responsibilities that differ among "handlers" and "recyclers/treaters."

22A: Supports the petition process provided in sections 66260.22 and 66260.23 and recommends adding a reference to Government Code section 11340.7, which defines the time limits for reviewing and granting or denying a petition.

22B: Section 66273.6(b)(5) contains an incorrect reference to subsection 66273.8(f), which has been deleted from the CRT emergency regulations by this rulemaking.

24O: The administrative requirements for CRT handlers should be simplified because the multiplicity of administrative requirements is confusing and unnecessarily burdensome. Therefore the requirements will likely undermine the goal of the rule, which is to facilitate CRT recycling by reducing burdens.

30G: The definition of universal waste handler excludes CRT material handlers. It is unclear whether a person who handles CRT materials would be afforded the exemptions given to universal waste handlers in sections 66264.1, 66265.1, 66268.1, or 66270.1.

30I: Text corrections are needed to sections 66264.1, 66268.1 and 66270.1 to clarify the list of universal wastes included in the exemptions offered in these sections.

30L: A "closure notification" should be added (possibly in section 66273.82) to help enforcement agencies track and keep up with abandoned waste sites.

30M: Include a chart to give an overview of who is subject to which regulatory requirements because the proposed regulations are cumbersome and will cover a lot of private individuals unfamiliar with regulatory compliance issues.

Response

1A, 4A, 22B, 30G, and 30I: DTSC concurs with these comments and agrees with the text suggestions for clarify purposes. Relevant sections of the regulations have been amended to clarify meaning and intent and those amendments were made available to the public during the 15-Day Public Notice and Comment Period of Post-Hearing Changes.

DTSC does not agree with the suggested changes to the remaining clarity issue comments as follows.

13B, 24O, and 30M: DTSC disagrees with these comments. The regulations are sufficiently clear on the requirements applicable to persons who engage in CRT handling and CRT recycling or treatment. The regulations contain sufficient organizational structure to allow affected persons to determine the regulatory requirements that pertain to their operations. DTSC recognizes that record keeping

requirements for waste tracking can be time consuming administrative tasks for the regulated community. However, the reduced administrative requirements and reduced waste management requirements offered under the universal waste management approach was determined to be as protective of human health and the environment as the full, hazardous waste management approach. (See the Preliminary Analysis and Findings Required by Health and Safety Code Section 25150.6, which was made available during the 45-Day Public Notice and Comment Period.)

22A: A petition review process that complies with Government Code section 66340.7 was provided in the 45-Day Notice and Comment Period rulemaking as subsection 66260.22(d), and therefore, no further text change is necessary.

30L: A "closure notification" requirement was provided in the text of the 45-Day Notice and Comment Period as section 66273.83(c)(1)(A)(3) through (5), and therefore, no further text change is required.

2B: CRT material handlers can accept CRT materials that are transferred to them by households and CESQUWGs, as specified in sections 66273.8 and 66273.9, at "consolidation locations." When a CRT material handler accepts CRT materials from these entities in this manner, no records are required to be maintained by the CRT material handler for the names and quantities received from these entities. However, illegally disposed CRT materials are required by current regulations and by these regulations to be managed as hazardous wastes by persons who choose to handle such wastes.

4.3 Petition Process

Summary of Comments

28L: The commenter supports the petition process, but requests clarification of the utility of the pertinent regulatory text after January 01, 2003, when the authority granted by Health and Safety Code, section 25150.6 expires.

Response

DTSC is responsible for implementing the State's federally-equivalent hazardous waste program in California. The universal waste regulations are an element of that program. DTSC must incorporate the petition process in these regulations if it is to add the additional hazardous wastes (i.e., CRTs and CEDs) to the group of wastes that are

allowed to be managed as universal waste and to seek authorization for the regulations. (See U.E. EPA authorization checklists 142a and 142E.) Thus, the petition process is necessary for authorization of the State's universal waste regulations. Health and Safety Code section 25150.6 authorizes DTSC to exempt certain hazardous waste management activities from one or more of the State's requirements in chapter 6.5 of the Health and Safety Code. DTSC is only allowed to adopt regulations that exempt hazardous waste management activities from requirements of chapter 6.5 if the regulations govern the management of a group of wastes specified in Health and Safety Code section 25150.6, subdivision (f), paragraph (1). The authority granted by Health and Safety Code section 25150.6 expires January 1, 2003, pursuant to subdivision (g) of that section. If or when, in the future, the Legislature again authorizes DTSC to exempt wastes from management requirements of chapter 6.5 of the Health and Safety Code, the petition process can be used to possibly allow additional wastes to be managed as universal waste.

4.4 Certified Unified Program Agency (CUPA) Costs for Inspections and Oversight

Summary of Comments

18C/19C: Traditional inspections by CUPAs are unnecessary and cost prohibitive to ensure adequate compliance by businesses that generate hazardous waste classified as universal waste. The notion that Unified Program Agencies (UPAs) can automatically add and/or increase fees to cover the cost of new laws and regulations continues to be a fallacy maintained by federal and State regulatory agencies. Local agencies cannot support new fees and/or fee increases given the economic situation that currently exists. CUPAs welcome funding assistance.

Response

DTSC has reviewed the comments and has determined that no regulatory change is required. This rulemaking does not create any new local mandates; therefore, the State is not required to provide local agencies with funding. The universal wastes addressed in these regulations are hazardous wastes for which the CUPAs have an existing statutory mandate to inspect and provide regulatory oversight. No new hazardous wastes are being added to the existing hazardous waste regulatory scheme; these universal wastes (which will remain hazardous wastes and may be managed under the UWR) will now be eligible for an alternate management scheme.

4.5 Studies Relied On

Summary of Comments

12G: The Basel Action Network report is not backed by scientific data and should not be used as a basis for state regulation development.

14F: Same as 12G, above (non-peer reviewed advocacy document).

Response

DTSC has reviewed the comments and has determined that no regulatory change is required. Government Code section 11346.2, subdivision (b)(2) does not require that all studies relied upon be formally peer reviewed, and states that the Initial Statement of Reasons include "an identification of each technical, theoretical, and empirical study, report, or similar document, if any, upon which the agency relies in proposing the adoption, amendment, or repeal of regulation." DTSC has met this requirement in identifying the documents discussed in the **Studies Relied On** section of the Initial Statement of Reasons, pages 18-19.

4.6 Extension of Time for Submittal of Comments

Summary of Comments

23A: Requested extension on comment submittal deadline until October 10, 2002 to await Governor Davis' action on Senate Bill 1523 and Senate Bill 1619, which will impact the commenter's comments.

Response

DTSC considered this request, but rejected it because the extension was not required by the Administrative Procedures Act. [Note: This commenter (Electronic Industries Alliance) did not submit additional comments. Senate Bill 1523 was vetoed by the Governor and the relevant statutes did not change.]